

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2024/HP/1069



IN THE MATTER OF: **THE RENT ACT CHAPTER 206 OF THE LAWS OF ZAMBIA.**

IN THE MATTER OF: **RULE 3 OF THE RENT ACT CHAPTER 206 OF THE LAWS OF ZAMBIA.**

IN THE MATTER OF: **SECTION 4 E (I) AND (II) OF THE RENT ACT CHAPTER 206 OF THE LAWS OF ZAMBIA.**

IN THE MATTER OF: **SECTION 13(1) (A) OF THE RENT ACT CHAPTER 206 OF THE LAWS OF ZAMBIA.**

IN THE MATTER OF: **HOUSE NO.273, CHIPATA ROAD, SILVEREST GARDEN, CHONGWE.**

BETWEEN:

JOSEPH MALANJI

APPLICANT

AND

DARLINGTON PAUL CHITANGI

RESPONDENT

BEFORE: HONOURABLE, LADY JUSTICE G. C. CHAWATAMA IN CHAMBERS ON THE 28TH NOVEMBER, 2024.

For the Applicant : ***Mr. J. Zimba and Mr. C. Nyimbiri both of Messrs. Makebi Zulu Advocates***

For the Respondent : ***In person***

JUDGMENT

CASES REFERRED TO:

1. *Lingson Chikoti v Zambia Railways Limited Appeal No. 158/2010*

LEGISLATION AND OTHER WORKS REFERRED TO:

1. *The Rent Act, Chapter 206 of the Laws of Zambia*
2. *Rules of the Supreme Court 1999 edition*

1.0 INTRODUCTION

1.1 The Applicant by way of Originating Notice of Motion dated 29th July, 2024 commenced this action, seeking for the following reliefs:

- i. A declaration that a written tenancy agreement between the Applicant and the Respondent created a relation of landlord and tenant;*
- ii. A declaration that the Respondent is in breach of the written tenancy agreement;*
- iii. A declaration that the Respondent has defaulted in payment of rentals and thus is in rental arrears.*
- iv. An order for the payment of ZMW 55,000 being the outstanding arrears;*
- v. Damages for loss of income and inconvenience caused by the Respondent failure to pay rent;*
- vi. An order to evict the Respondent for breach of the written tenancy agreement;*
- vii. Interest on all sums found due and*
- viii. costs*

1.2 The Originating Notice of Motion was accompanied by an affidavit in Support.

2.0 AFFIDAVIT EVIDENCE

2.1 The affidavit in support was sworn by Joseph Malanji, the Applicant herein who deposed that the property known as

house No. 273 Chipata Road, Silverest Garden, Chongwe belong to the Applicant. A copy of a letter confirming proof of ownership was exhibited and marked "JM1".

2.2 That the Applicant is aware that according to the written tenancy agreement entered into between the Applicant and the Respondent on 23rd January, 2022 rentals were to be paid to the Applicant every month end in the total sum of ZMW 5,000. A copy of the written tenancy agreement was exhibited and marked "JM2".

2.3 It was averred that the Applicant is aware that the Respondent has neglected to pay the rentals which are due and payable. That the Applicant has on several occasions reminded the Respondent to pay the amount owed but he has refused and or neglected to settle the debt. A copy of the letter was exhibited and marked "JM3".

2.4 It was further deposed that the Respondent is in breach of the written agreement dated 23rd January, 2022 as regards rental payments as he has defaulted on paying rent. That the Applicant is entitled to the rent amounts due in the sum of K55,000 from the date of the agreement to the date of filing this action. A copy of the letter of eviction was exhibited and marked "JM4".

2.5 That the Applicant has suffered inconvenience and loss of use of the money due as a result of the Respondent's default. That the Respondent has put the Applicant to a great cost in pursuing this matter.

2.6 In the skeleton arguments filed it was submitted that under **Rule 3 of the Rent Act** provides that:

"A complaint or application to the court under the Act shall be commenced by an originating notice of motion. Evidence in support thereof may be on affidavit or viva voce".

Further that **section 4 (e) (i) and (ii) of the Rent Act** provides that:

"The court shall have power to do all things which it is required or empowered to do by or under the provisions of this Act and in particular shall have power-

Subject to the provisions of section thirteen, to make either or both of the following orders, that is to say: powers of the Court (i) an order for the recovery of possession of premises, whether in the occupation of a tenant or of any other person and (ii) an order for the recovery of arrears of standard rent, mesne profits and a charge for services"

2.7 It was then argued that this Court is vested with the power to grant the Applicant the reliefs sought. **Section 13(1) of the Rent Act** was also cited which provides that:

"No order for the recovery of possession of any premises or for the ejectment of a tenant therefrom shall be made unless-

(a) *some rent lawfully due from the tenant has not been paid or some other obligation of the tenancy (whether under a contract of tenancy or under this Act) so far as the same is consistent with the provisions of this Act, has been broken or not performed; or*"

2.8 Counsel submitted that the Respondent breached the tenancy agreement entered into between the Applicant and the Respondent on 23rd January, 2022 and as such the Applicant has suffered inconveniences and loss due to the unpaid rentals for a period of eleven months. That according to paragraph 10/0 under part B of the tenancy agreement dated 23rd January, 2022 provides that:

"The tenant is obligated to pay the reserved rent on the days and in the manner as aforesaid"

2.9 That the Respondent in this matter has breached a term of the tenancy agreement in relation to payment of rentals they fall due for a period of eleven months in the sum of ZMW 55,000. Also, that the Applicant has suffered costs in commencing this matter. That the Respondent should bear the costs of this application.

3.0 OPPOSITION

3.1 The Respondent filed the affidavit in opposition on the 9th October, 2024. Wherein it was averred that the Applicant

acted through a Mr. Ernest Mwansa who was at all material times his agent and through whom all payments and correspondence pertaining to the tenancy was made.

- 3.2 That the Respondent have not refused to make any payments on rental arrears but instead requested that the house be repaired and maintained in order to make it more habitable as was agreed upon in part C of the tenancy agreement before the Respondent proceed to making any further payments. A copy of the tenancy agreement was exhibited and marked "DPC1".
- 3.3 It was the Respondent's further averment that since the inception of the tenancy agreement, the Applicant has failed to fulfil his obligations in making the requisite repairs in order to make the premises habitable and has instead made numerous unfilled promises to carry out the said works. Pictures of the damage to the property was exhibited and marked "DPC2".
- 3.4 That the reason for the Respondent's decision to withhold rental payment is as a result of the Applicant's failure to carry out the said repairs as agreed which in itself is a breach of contract which led the Respondent opting to carry out the said repairs out of pocket.

3.5 It was the deponent's further averment that the Respondent has only neglected to pay rentals for a combined period of 6 months which total adds up to ZMW 30,000 as opposed to the Applicant's alleged ZMW 55,000. A copy of the proofs of payment indicating the last payment made on 20th November, 2023 was exhibited and marked "DPC3".

4.0 AFFIDAVIT IN REPLY

4.1 In reply, it was deposed that the Respondent occupied the house in a very good and habitable condition and that there is no way that the house would require maintenance within few months from occupying it. That the contents in paragraph 7 of the Respondent's affidavit in opposition is opinionated as they are not supported by neither an inventory of the amount spent nor work done on the said premises as such, they are far from the truth and consent from the landlord was not obtained to do so the said maintenance (if any).

4.2 That as at 30th August, 2023, the Respondent was owing K55,000 and that the Respondent's last payment in relation to the rentals was made on 28th September, 2023 in the sum of K10,000. That the Respondent stopped making payments and the amount owed increased to K55,000 and the Applicant is still entitled to a total sum of ZMW55,000 as rental arrears which are due, payable as at February, 2024

and are still accumulating. A copy of the receipt of payment from the bank was exhibited and marked "JM2.

5.0 HEARING

5.1 At the hearing of this matter, counsel for the Applicant relied on the documents filed into Court, re-casted above. The Respondent equally relied on the affidavit in opposition.

6.0 ANALYSIS AND THE DECISION OF THIS COURT

6.1 I have examined the evidence adduced in the affidavit of the respective party's affidavit filed herein. I have also considered the arguments by counsel for the Applicant. The question for determination is simply whether or not this Court should grant the reliefs sought by the Applicant.

6.2 I must state at the outset that the Applicant's application is premised on section 13(1) (A) of the Rent Act reproduced above. The reading of section 13 (1) (a) of the Rent Act clearly reveals that no order for the recovery of possession of any premises or ejection of a tenant shall be made unless where a contractual agreement of landlord tenant exists and rent lawfully due from the tenant has not been paid or some other obligation of the tenancy has been broken or not performed. Even where the aforesaid has occurred, section 14 of the Act restricts distress for the recovery of rent except with the leave

of the court. The Supreme Court in the case of *Lingson Chikoti v Zambia Railways Limited*² simply put it that:

“The Rent Act is intended to protect tenants of dwelling houses. It restricts the right to possession of dwelling houses.”

- 6.3 In the current matter, this Court is satisfied by the affidavit evidence produced by both parties in the form of a written tenancy agreement between the Applicant and the Respondent that there exist a relation of landlord and tenant. On this basis alone, the Applicants relief namely that a declaration that a written tenancy agreement between the Applicant and the Respondent created a relation of landlord and tenant accordingly succeeds.
- 6.4 As regards the Applicant’s second and third relief for a declaration that the Respondent is in breach of the written tenancy agreement and a declaration that the Respondent has defaulted in payment of rentals and thus is in rental arrears. The Respondent have strongly averred that the Respondent have not refused to make any payments on his rental arrears but instead requested that the house be repaired and maintained in order to make it more habitable in accordance with part c of the tenancy agreement. It was further averred that by the Respondent that the decision to withhold rental payment is as a result of the Applicant’s failure to carry out the repairs. I have examined part C of

the tenancy agreement in so far as it relates to repairs, the parties herein agreed as follows:

“Landlords Obligations

Not to unduly or unreasonably interfere with the conduct of any business lawfully carried on / in at the demised premises and shall carry out any repairs or other work as expeditiously as possible.

To enter the premises provided the tenant has been given notice at all reasonable times either through its representatives or servants or through contractors for inspecting the premises and for carrying out any repairs or other work in respect of the premises or the building.”

6.5 The critical examination of part C of the tenancy agreement does not in any way envisage or permits the Respondent to withhold payments of the rentals when the fall due despite the failure of the Applicant to carry out repairs. I do not therefore accept the Respondent’s reasons advanced of his breach to pay rentals. In fact, the Respondent having misgivings on the state of the rented house had the liberty to terminate the tenancy agreement and move to a habitable house of their choice. I am therefore inclined to accept the

Applicant's position that the house was in good and habitable condition. To this effect, the second and third relief of the Applicant namely that a declaration that the Respondent is in breach of the written tenancy agreement and that the Respondent has defaulted in payment of rentals and is in rental arrears accordingly succeeds and is hereby granted.

6.6 With regards an Order for the payment of ZMW 55,0000 being the outstanding rental arrears, the Respondent position was that he only neglected to pay rentals for a combined period of 6 months which totals adds up to ZMW 30,000 as opposed to the ZMW 55,000. In support the Respondent produced pictorial of his alleged payment statement. I am not satisfied with the pictorial statement adduced as it is not cogent evidence, this Court would have been moved if the Respondent adduced bank statement, deposit receipts and airtel money statement to support the alleged payments. From the evidence on record, I am persuaded to accept that the Respondent last payment in relation to the rentals was made on 28th September, 2023 in the sum of K10,000. The Applicant's relief number four therefore accordingly succeeds. I hereby order that the judgment sum of ZMW55,000 (being elven months rental arrears) together with any unpaid rental arrears up to the date of this Judgment be paid to the Applicant by the Respondent forthwith together with interest at a short term deposit rate from the date of the originating Notice of Motion to the date

of this Judgment and thereafter at the current commercial lending rate until final payment.

- 6.7 With regards to damages for the loss of income and inconvenience caused by the Respondent failure to pay rent, it is my considered view that this relief is or are special damages which must be proved with cogent evidence other than merely stating on the originating notice of motion. The Applicant's prayer as regards damages for the loss of income and inconvenience fails.
- 6.8 With regards to the relief of an Order of eviction, it is my firm view that, it is necessary in this matter to grant the Applicant an order to evict the Respondent for breach of the written tenancy agreement. I hereby Order that the Respondent vacate the property known as house No. 273 Chipata Road, Silverest Garden, Chongwe forthwith from the date of this Judgement.
- 6.9 As regards costs, it is trite law under Order 62 rule 3 of the Whitebook that costs are in the discretion of the court. It is also trite law that this discretion to award costs should be exercised judiciously and with caution. In the current matter, it is evident that the Applicant was made to prosecute this matter as regards the rentals arrears. It is therefore a fact that the Applicant was put to some expense in preparing for the matter as well as his counsel's attendance to court

proceedings to prosecute their case. It is on this basis that I award costs to the Applicant to be taxed in default of agreement.

DELIVERED AT LUSAKA THIS 06TH DAY OF DECEMBER, 2024.


G.C. CHAWATAMA
HIGH COURT JUDGE